

Center for
Public Policy &
Administration
UNIVERSITY OF UTAH

THE PUBLIC MEETING

**ASSURING
PROCEDURAL
DUE PROCESS**

An educational handbook
for group discussion

2006

DUE PROCESS OF LAW

The key to effective local government action is the participation by the governed. Government in the United States exists only by the consent of the governed ... effective public meetings are, therefore, essential to a democratic process.

The Fifth and Fourteenth Amendments to the Constitution guarantee to each citizen “due process of law.” The guarantee of due process assures that the laws that effect individual lives and property are not unreasonable, arbitrary, or capricious. When laws and regulations impact life, liberty or property, the principle of due process requires that each citizen so affected is entitled to timely notice of the actions or procedures that will be taking place. Each citizen shall have an opportunity to participate in an orderly, unbiased proceeding, suited to the nature of the matter at issue.

In his book, *Legal Foundations of Land Use Planning*, legal scholar Jerome G. Rose wrote:

Due process is perhaps the most important constitutional principle that planners must understand. Due process imposes significant limitations on the law as an instrument of urban planning ... It is this principle, more than any other in the Constitution, that prescribes the limits of the ability of government to provide for the welfare of the public.

The principle of due process of law is perceived in two components — substantive and procedural.

SUBSTANTIVE DUE PROCESS

The concept of substantive due process provides that no person may be deprived of life, liberty, or property by governmental actions that are unreasonable, arbitrary, or capricious. The courts retain the authority to review language of regulatory legislation to determine whether such regulations bear the required relationship to, or offer a rational basis in, *a legitimate governmental purpose*.

The legitimate governmental purpose is specifically the protection of the public health, safety and welfare. The authority of government to create laws to protect the public health, safety and welfare is referred to as the “Police Power.” The term has roots in old English Common Law.

To find a rational basis, or “nexus,” to a legitimate governmental purpose, a court will question the source of a legislative regulation or requirement. Recent U.S. Supreme Court decisions have imposed greater responsibility upon local governments to produce adequate research or accumulated information to demonstrate a need for the regulation in question. It must be shown that the action, regulation, standard, or requirement, is imposed unquestionably in support of the public good. *Substantive due process applies basically to the language or intent of the legislative act.*

PROCEDURAL DUE PROCESS

Procedural due process refers to the method by which due process is administered. The public meeting is the prime opportunity for the exercise of procedural due process. If the action of a government imposes an impact or restraint upon the life, liberty, or property of an individual or the public at large, that government must grant sufficient notice of such action and an opportunity for all affected persons to participate in the process. The process must assure a fair and orderly proceeding – as explained on subsequent pages.

The meetings must be conducted such that they offer not only the opportunity to present development proposals or requests for zoning amendments, but opportunities for persons who may be affected, or just interested, to observe the action and ask relevant questions. The local governmental process must be conducted with dignity, respect, and close attention to the law.

The following are examples of actions or practices that have been observed during meetings of deliberative decision-making bodies in Utah:

- *A town planning commission holds its regular meeting each month in a room in the town hall. No meeting schedule has been published announcing the meeting, and no agenda is made available at the door or any other public place prior to the meeting.*
- *A city board of adjustment excuses itself from the chamber during its regular meeting to move into a private room to “deliberate” on a specific agenda item. The board returns later and the chairperson calls for a vote on the item. The participants in the issue under discussion, as well as the audience of interested citizens, have heard no discussion of the issue and do not know how the board arrived at its decision.*
- *A commission secretary hands out minutes for the meeting that was held four months before. She apologizes for being “a little behind.”*
- *During a discussion of an agenda item at a regular county commission meeting, two members of the commission lean over, away from their microphones, and whisper to one another.*
- *The elected officials of a municipality, some administrators, and members of the planning commission, meet at a mountain cabin for a “retreat.” They have met to discuss important community issues “away from the phones and interruptions.” The meeting was not announced publicly in advance.*
- *During a public meeting, participants making a presentation to the commission stand in front of the commission with their backs to the audience. The presentation is neither visible nor audible to the audience.*

Each of these actions (or inactions) is an example of poor meeting management. Any of these misdeeds were, or could have been, challenged as a violation of the Utah Open and Public Meetings Act.

THE OPEN & PUBLIC MEETINGS ACT – The “Sunshine Law”

Section 52-4-102, Declaration of public policy, makes it clear that it is the policy of the State of Utah that actions and deliberations by the state, its agencies and political subdivision, exist to aid in the conduct of the people's business and be taken openly. The definition section of the Act provides definitions of important terms, such as “Meeting,” “Public body,” and “Quorum.”

Open Meetings

A “meeting” to which the requirements of the Act apply refers to the convening of a quorum of the membership of a deliberative body including a workshop or executive session (whether in person or by means of electronic equipment) “for the purpose of discussing or acting upon a matter over which the public body has jurisdiction or advisory power.” The reference to advisory power, of course, refers to deliberations of the planning commission which is generally acting as advisory to the legislative body.

The Act clarifies that the term “meeting” does not apply to chance or social gatherings of the body, or meetings during which no formal action is to take place. This exempts meetings that are called for information, training, or discussion of administrative or operational matters. A quorum is a simple majority, unless otherwise defined by applicable law.

Closed Meetings

Section 52-4-3 states that every meeting, including a workshop or an executive session, is open to the public unless closed pursuant to *Sections 52-4-204, 52-4-205, 52-4-206*

A closed meeting may be held, if a quorum is present, with the affirmative vote of two-thirds of the membership of the public body present at an open meeting. The open meeting must have been called following proper notice requirement as provided by *Section 52-4-202*.

A meeting of a public body may not be closed except as provided by *Section 52-4-205*. A closed meeting may be held for the purpose of discussing personnel matters, such as the character, competence or health of an individual. A closed meeting may also be held to discuss impending litigation that involves the body or its members — this refers to legally initiated action, not just threats. Meetings may be closed for the discussion of security matters, or proceedings regarding allegations of criminal misconduct. And meetings may also be closed for collective bargaining purposes.

It should be emphasized, with respect to calling a closed meeting, that the closed meeting can be called only during an open meeting that was duly noticed publicly. The calling of the closed meeting must be shown on the agenda of the open meeting. The minutes of the open meeting must show the reasons for holding a closed meeting, and

the vote by the body for or against the proposition to hold such a meeting.

Minutes of Open and Closed Meetings

Section 52-4-203 establishes that written minutes shall be kept of all open meetings. The minutes shall include the following:

- The date, time and place of the meeting;
- The names of members present and absent;
- The substance of all matters proposed, discussed, or decided, and the vote taken by individual members;
- The names of all persons who spoke and substance of their testimony in brief;
- Any other information that any member requests be entered into the minutes.

For closed meetings, the Act requires that the minutes include:

- The date, times and place of the meeting;
- The names of members present and absent;
- The names of all other persons present except where disclosure would infringe upon the confidence necessary to fulfill the original purpose of the closed meeting.

Section 52-4-206 provides that if a public body calls a closed meeting to discuss the character, professional competence, the physical or mental health or an individual, or the deployment of security personnel, devices, or system, the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss these matters.

All minutes shall be maintained and made available as a public record. Electronic devices may be used to record during a meeting, but should be converted to a format that meets long-term records storage requirements.

The assurance of procedural due process begins with proper notice

Any person who may have an interest in a governmental action has a right to be informed in a timely manner of the action, and the means by which the person can participate in the process and effectively represent his or her interests. The requirements for public notice are established by the *Utah Code* in both the Land Development and Management Act and the Open and Public Meetings Act.

It is important to consult both of the acts in order to gain a complete picture of the notice requirement.

The term “actual notice” (sometimes also referred to as “direct notice”) refers to notice that is delivered directly to the affected property owners.

Most planning commissions and boards of adjustment conduct field trips to the sites on which actions are to be decided at a future meeting or hearing. Such visits are very informative and are encouraged, but it must be kept in mind that these are also public meetings and the public body conducting the field trip must comply with all notice requirements and provide for public attendance.

Public Hearings. The Land Use Development and Management Act provides, in all sections in which a public hearing is required, a 10 day notice period prior to the hearing.

It is always advisable to expend extra effort to assure that proper notice has been provided for all meetings, public hearings, and decision-making. Any litigation challenging local government actions or decisions will start with careful investigation of the process during which an action or decision was made. Failure to follow State law or local ordinances may invalidate an important decision or adopted policy.

Section 52-4-202 provides the basic requirements for publicly displayed announcements showing an annual schedule of all meetings of the legislative and administrative bodies; the public display of the agenda date, time and place of every regular meeting and public hearing, and the means by which these notice requirements are to be provided.

24 hour notice displayed for the regular meetings

There shall be a schedule on display in an appropriate public building showing agenda, date, time, place of a regular meeting and an agenda. This information shall be displayed 24 hours in advance of the meeting.

An emergency meeting of a public body may be called, and notice requirements may be disregarded — but only if an attempt is made to notify all members, and a majority votes in favor of holding the meeting.

Executive and Work Sessions

In addition to the regularly scheduled public meetings, a planning commission may wish to conduct executive or work sessions when desirable. The definition of a meeting, as discussed on page 3, cites the Open and Public Meetings Law, *Section 52-4-103*. Here it is explained that for purposes of the law a meeting must be a session that involves a quorum, including a workshop or an executive session, of the public body during which matters are discussed that will “come before the public body for discussion or action.”

Consequently, if an executive session is held prior to the opening of the regular meeting to discuss the agenda items, or other issues that may come before the body, the meeting must be publicly noticed, and the public allowed to attend. A gathering called for general training, social activity, or to discuss administrative issues, need not comply with notice requirements. Equally important as holding regularly scheduled meetings is

a set of well-developed policies and procedures for organizing and conducting the meetings. Specific bylaws governing procedures should be developed by the commission or board.

AGENCY BYLAWS

The rules should be formalized in written form to assure continuity. They should be provided to all in-coming members. An important responsibility of the chairperson is to understand the bylaws and rules of order and insist upon careful compliance.

Samples of planning commission bylaws are re-printed in Appendices A and B.

Agenda

The meeting agenda should be displayed publicly, preferably near the room in which the meeting is to be held, at least 24 hours prior to the start of a regular meeting. An adequate supply of copies of the agenda should be made available to attendees as they enter the room.

Chairperson

Meetings are presided over by the chairperson, or a member designated to act in the absence of the chair. The chairperson contributes considerably to the success of the meeting, and should assure an atmosphere that is positive and friendly. The chair should make certain that there is sufficient seating for the anticipated audience, that

At the designated time for the meeting to begin, if a quorum is present, the chair calls the meeting to order. If a quorum is not present, the chair may delay the meeting for a reasonable length of time to await arrival of additional members. It is important the chair adhere as closely as possible to announced starting and closing times.

Approval of Minutes

The approval of minutes of previous meetings or actions is a procedure that is sometimes regarded as trivial, and even ignored. Failure to complete the approval of minutes during the public meetings and record them accurately – inserting any changes – could result in serious legal complications. It is recommended that the minutes be made available to board members well in advance of the meeting at which the minutes are to be approved to assure that members have read them carefully before approving.

For many purposes, an approval or an action may not be considered concluded and defensible until it can be shown that there is a record of such and that the action was approved by the board.

It is often said that if there is no approved written public record of an action, the action didn't happen.

Most boards approve the minutes at the beginning of a meeting – others defer to the end. Meetings often become emotional, or extend late into the evening – if the approval

of minutes has been placed at the end of the meeting, it may be easy to overlook this important responsibility.

Conflicts of Interest

A matter that should be resolved prior to the public presentation of issues to come before the deliberative body is assurance of no conflicts of interest among the members. It should be made known publicly if there is among any of the members a close personal relationship with an applicant for an approval, or an opportunity for financial gain or other advantage. *The highest goal of decision-making process is an unbiased decision.*

The chair should determine such conflicts prior to the time that the issue in question is presented publicly. Though State law requires only public disclosure, it is generally considered advisable that the member or members who may have a conflict excuse themselves from participation or voting on the issue — and preferable leave the room during deliberation to avoid any perception of influencing the decision.

The Ethical Principles of the American Planning Association, Section B. 4, advises the following:

[Planning process participants] should abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters expressly authorized their participation[.]

Ex Parte Contact (Latin: “From a one-sided or partisan point of view.”)

Although a member of the legislative body may gather information from many sources to augment his/her decision-making role, this activity is limited for an administrative body, such as a planning commission. There will be occasions when a planning commissioner will be contacted by an applicant whose issue is on the agenda for a forthcoming meeting. The contact may be an innocent desire to provide information, or a less than innocent attempt to influence the commissioner’s decision. In either case, the commissioner should inform the applicant that a commissioner is not at liberty to discuss the matter – or inform the applicant that any information received by the commissioner must be shared with all at the public meeting, before deliberation on the issue.

Such disclosure is also expected from a commissioner who might uncover additional information or insight by personal observation. The commissioner should bring this information to the meeting and present it during the discussion.

The key point is that all deliberations and decisions made by the commission must be conducted with total openness and fairness.

Presentations and Discussions - Should be Audible and Visible

After disposition of the preliminary procedures, the agenda items are normally presented and discussed. Most likely the agenda includes applications for new development, proposed amendments to the zoning ordinance, or other issues that involve presentation of plans, plats, or illustrations before the deliberative body. Such presentations are important and should be visible to all persons who may be in attendance to assure full opportunity for participation.

On many occasions presentations are made to a board that is seated behind a table or dais facing the audience. The presenters are often asked to sit or stand with their backs to the audience. The board members and the presenters will chat at an intimate conversational distance – the audience often can neither see the materials nor hear the verbal interaction.

The room arrangement and procedures will encourage successful meetings if they maximize audience awareness and participation. The presenter should be aware of the audience while presenting to the board. Many organizations request applicants to present their material on an overhead projector – especially if a large audience is anticipated.

Crowd Control

While most public meetings may be friendly and courteous, there are occasions when issues arouse primate instincts and uncontrolled emotions. Public bodies should be aware of the potential for such behavior, and be prepared to manage any situation. Members of a board must resist the potential of becoming unduly influenced by persuasive, but often irrational comments or actions.

In the event of controversy, the chairperson must remain solidly in control of the meeting. The chair should assure that participants are aware that a public meeting is called and conducted in an orderly manner to accept pertinent points of view, dispense information, and assure that the public interest is balanced with individual rights.

Decisions of public bodies have been rejected by courts when it was apparent from the record that a body was influenced more by vocal participants at a meeting than by their responsibility to represent the public interest.

The Straw Vote

It is not uncommon for citizens who share a point of view on a community issue to agree to attend a public meeting together to represent their point of view. Often, when a group perceives that they are well-represented they will call for a “straw vote” to convince the

board that they represent the majority. There are occasions when a board will call for such a vote to test the sentiment of the audience.

Ad hoc savoring of opinion in this manner should not be considered a true representation of the entire community. Those attending a meeting to favor or object to a specific development proposal were very likely not especially drawn to the meeting as representatives of the community.

Petitions

Another technique frequently used for demonstrating response to an issue is the signed petition. The signatures on a petition may be impressive and even useful in assessing public opinion. The board must make it clear, however, that a petition may not be an honest representation of the community, and would need to be carefully analyzed.

The board that is asked to be influenced by the petition by its sheer numbers of names has likely had no opportunity to verify the signatures, and no means by which to assess if pressure or misrepresentation was used to gain the signatures. There is always a question as to whether those whose names appear on the petition were made fully aware of all facts and issues.

PARLIAMENTARY PROCEDURE – RULES OF ORDER

Where there is no law, but every man does what is right in his own eyes, there is the least of real liberty. HENRY M. ROBERT

It is the uppermost responsibility of the chair, and the heartfelt desire of all board members, to conduct and take part in an orderly procedure. The Foreword to the newly revised edition of *Robert's Rules of Order, 10th Edition*, expresses the goal of parliamentary procedure:

The term *rules of order* refers to written rules of parliamentary procedure formally adopted by an assembly or an organization. Such rules relate to the orderly transaction of business in meetings and to the duties of officers in that connection. The object of rules of order is to provide a firm basis for resolving questions of procedure that may arise.

Some local government bodies have adopted as part of their bylaws the use of Robert's Rules of Order. The Rules are extremely complex, and expert parliamentarians are rare. It is important, however, that groups understand the basics of obtaining the floor, making and seconding motions, amending and voting, tabling, substituting, etc. A board should assure that its members are aware of the basic procedures. Under conditions of harmony, particularly in smaller groups, only certain simple parliamentary rules need normally come directly into play.

THE PUBLIC HEARING

A public hearing is called to accomplish a specific purpose. A local legislative body in

Utah, following the Land Use Development and Management Act, is required to call for a public hearing as part of the process to adopt or amend a general plan or a zoning ordinance. A planning commission is required to hold a public hearing for adoption or amendment of the general plan. (*Section 10-9a-404, 17-27a-404*)

Though the rules for conduct of the decision-making process differ between legislative and administrative bodies, the conduct of a public hearing is regarded as quasi-judicial [adjudicative]. All bodies must, therefore, adhere closely to the rules of procedure.

The American Planning Association published the following guidelines for conduct of the public hearing. The guidelines were prepared by attorney R. Merlin Smith.

1. **Notice.** Adequate and timely notice of proceedings of the proposed decision-making or rule-making process should be made available to interested persons.
2. **Opportunity to be Heard.** All persons interested in a prospective decision should be given an opportunity to offer their views and supply evidence in their support. A hearing in which there is no meaningful opportunity to be heard and which frustrates
3. **The Right of Cross Examination.** When a hearing is regarded as adjudicative or quasi-judicial, all parties must be accorded the opportunity to question their opponents and the opposing witnesses. Some courts have suggested that even a legislative hearing allow for cross examination.
4. **Disclosure.** There must be an opportunity to see, hear, and know of the instruments, facts and evidence that are considered by the body making the decision. Any private communications to individual decision-makers must be made public at the hearing.
5. **Finding of Fact.** When an administrative decision is involved, the findings or reasons for the decision are an essential aspect of due process. Explicit and careful findings of fact enable all interested persons to know exactly what has been decided.
6. **Conflicts of Interest and the Appearance of Conflict or Impropriety.** When an individual decision-maker has a direct or indirect financial interest in the decision, or a close relationship with a participant, the decision could be infected with a potential bias. Such persons should be dismissed from participation in the discussion and decision.
7. **Prompt Decisions.** Adequate and timely notice, and full and completely fair hearing do not guarantee due process unless a decision is made promptly. The old saying, "Justice delayed is justice denied," is appropriate here.

8. **Records of Proceedings.** Complete and accurate records of the proceedings must be kept. All exhibits must be preserved and there must be a stenographic record of all testimony heard and all statements made.
9. **Ground Rules for Fair Hearings.** A decision-making body cannot conduct a hearing in an orderly and efficient manner unless it provides a set of rules which are available to all interested persons.

All regular meetings and public hearings of local government must be conducted with dignity and scrupulous attention to the rules. Public meetings and hearings are possibly the most important functions in the planning process — and citizen participation. The properly conducted meeting is the citizen's best assurance of the constitutional guarantee of due process of law.

TIPS FOR BETTER MEETINGS

In the training package entitled “Meeting Management,” the American Planning Association provides the following summary for improving the conduct of public meetings.

Before the Meeting

- Define the purpose for the meeting.
- Develop an agenda and plan the activities for the meeting.
- Distribute the agenda in advance of the meeting. [24 hours in advance.]
- Arrange the meeting room such that the members will feel welcomed and will want to participate.

Starting and Conducting Meetings (Chair)

- Start the meeting on time.
- Preview the agenda and explain the meeting's purpose.
- Stick to the agenda and move through it in an efficient manner.
- Seek to involve everyone in the discussion.
- Keep the discussion focused by keeping notes and summarizing.
- Serve as a meeting facilitator and not meeting dominator.

End of the Meeting

- End the meeting on time. [Never allow a meeting to run beyond the limit of human endurance.]
- Recap the meeting's highlights and accomplishments.
- Review and assign any after-meeting duties.
- Debrief the meeting with the participants.
- Brainstorm about the next meeting's agenda.
- Set the date, time and place for the next meeting.

- Thank everyone for attending and participating.

After the Meeting

- Review the debriefing results.
- Prepare the meeting's minutes and distribute them.
- Compare the meeting's agenda with what actually happened.
- Monitor the progress toward completion of assigned duties and tasks.

RECENT COURT DECISIONS ON PROCEDURAL DUE PROCESS

Extracted from Land Use Law

1. City's failure to provide a developer with notice and opportunity to be heard before adopting a zoning amendment reclassifying a landowner's property constitutes denial of procedural due process.
Nasierowski Investment Co. V. City of Sterling Heights, US Court of Appeals, MI. 1991.
2. The city council's rezoning to commercial is invalid when the council votes after receiving only informal, unapproved minutes of the planning commission.
Helm v. Citizens to Protect Prospect Area, Ct. of Appeals, KY, 1993.
3. The county board violates due process in approving a conditional use permit allowing a softball park to operate lighting until 11 PM when, without proper notice, the board considered new evidence. *Chambers v. Kootnai County Board of Commissioners*, Sup. Ct., ID, 1994.
4. In a sign ordinance appeal proceeding, failure to allow cross examination of the zoning administrator by the applicant is a violation of due process.
J.B. Advertising v. Sign Board of Appeals, Ct. Of Appeals, TX 1994.
5. Published notice of an appeal to the zoning board that fails to identify the location of the appeal, subject matter, related land, and the nature of the appeal is considered legally deficient. *Koepke v. Zoning Board of Appeals*, App. Ct., CN, 1991.
6. A zoning amendment adopted under the town's initiative and referendum provision is declared invalid when provision does not comply with the zoning statute's notice and hearing requirements. *L.A. Ray Realty v. Town Council of Town of Cumberland*, Sp. Ct., RI, 1992.
7. A rezoning is declared invalid when the township's newspaper notice of the hearing does not say where the text of the proposed amendment can be viewed or obtained. *Tinicum Township v. Tinicum Township Zoning Hearing Board*, Commonwealth Ct. of PA, 1993.

Utah Code -- Title 52 -- Chapter 04 -- Open and Public Meetings Act

52-4-102. Declaration of public policy.

(1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.

(2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

- (a) take their actions openly; and
- (b) conduct their deliberations openly.

52-4-103. Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:

- (a) an electronic meeting originates; or
- (b) the participants are connected.

(2) "Convening" means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(3) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(4) (a) "Meeting" means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing or acting upon a matter over which the public body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

- (i) a chance meeting;
- (ii) a social meeting; or

(iii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and:

(A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or

(B) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action.

(5) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(6) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(7) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

- (i) is created by statute, rule, ordinance, or resolution;
- (ii) consists of two or more persons;
- (iii) expends, disburses, or is supported in whole or in part by tax revenue; and
- (iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" does not include a:

- (i) political party, political group, or political caucus; or
- (ii) conference committee, rules committee, or sifting committee of the Legislature.

(8) "Public hearing" means a portion of a meeting in which comments from the public will be accepted.

(9) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(10) (a) "Quorum" means a simple majority of the membership of a public body, unless

otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(11) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

52-4-104. Training.

The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.

52-4-201. Meetings open to the public -- Exceptions.

(1) A meeting is open to the public unless closed under Sections **52-4-204**, **52-4-205**, and **52-4-206**.

(2) (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

(b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;

(iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section **52-4-207**; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

52-4-202. Public notice of meetings -- Emergency meetings.

(1) A public body shall give not less than 24 hours public notice of each meeting including the meeting:

(a) agenda;

(b) date;

(c) time; and

(d) place.

(2) (a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.

(b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.

(3) Public notice shall be satisfied by:

(a) posting written notice at the principal office of the public body, or if no principal office exists, at the building where the meeting is to be held; and

(b) providing notice to:

(i) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or

(ii) a local media correspondent.

(4) A public body is encouraged to:

(a) develop and use electronic means to provide notice of its meetings under Subsection (3)(b);

(b) provide public notice to all other media agencies that make a periodic written request to receive them; and

(c) post public notice of its meetings on the Internet.

(5) (a) The notice requirement of Subsection (1) may be disregarded if:

(i) because of unforeseen circumstances it is necessary for a public body to hold an emergency meeting to consider matters of an emergency or urgent nature; and

(ii) the best notice practicable is given.

(b) An emergency meeting of a public body may not be held unless:

(i) an attempt has been made to notify all of its members; and

(ii) a majority of its members approves holding the meeting.

(6) (a) A public notice that is required to include an agenda under Subsection (2) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.

(b) Except as provided in Subsection (5) and Subsection (6)(c), a public body may not consider a topic in an open meeting that is not:

- (i) listed under an agenda item under Subsection (6)(a); and
- (ii) included with the advanced public notice in accordance with this section.

(c) A topic not listed on the open meeting agenda that is raised during an open meeting may be discussed but no final action may be taken by the public body during that meeting.

52-4-203. Minutes of open meetings -- Public records -- Recording of meetings.

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings. The minutes and a recording shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent;
- (c) the substance of all matters proposed, discussed, or decided;
- (d) a record, by individual member, of votes taken;
- (e) the name of each person who provided testimony and the substance in brief of their testimony; and
- (f) any other information that any member requests be entered in the minutes or recording.

(2) A recording of an open meeting shall be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting.

(3) (a) The minutes and recordings of an open meeting are public records and shall be available within a reasonable time after the meeting.

(b) An open meeting record kept only by a recording must be converted to written minutes within a reasonable time upon request.

(4) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(5) Minutes or recordings of an open meeting that is required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(6) Written minutes and recordings of open meetings are public records under Title 63, Chapter 2, Government Records Access and Management Act, but written minutes shall be the official record of action taken at the meeting.

(7) Either written minutes or a recording shall be kept of:

- (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; and
- (b) an open meeting of an independent special district as defined under Title 17A, Special Districts, or a local district under Title 17B, Chapter 2, Local Districts, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

(1) A closed meeting may be held:

(a) if a quorum is present; and

(b) if two-thirds of the members of the public body present at an open meeting for which notice is given under Section **52-4-202** vote to approve closing the meeting.

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section **52-4-205**.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

- (a) the reason or reasons for holding the closed meeting;
- (b) the location where the closed meeting will be held; and
- (c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Nothing in this chapter shall be construed to require any meeting to be closed to the public.

52-4-205. Purposes of closed meetings.

(1) A closed meeting described under Section **52-4-204** may only be held for:

- (a) discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation;
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property if public discussion of the transaction would:

- (i) disclose the appraisal or estimated value of the property under consideration; or
- (ii) prevent the public body from completing the transaction on the best possible terms;
- (e) strategy sessions to discuss the sale of real property if:
 - (i) public discussion of the transaction would:
 - (A) disclose the appraisal or estimated value of the property under consideration; or
 - (B) prevent the public body from completing the transaction on the best possible terms;
 - (ii) the public body previously gave public notice that the property would be offered for sale; and
 - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) investigative proceedings regarding allegations of criminal misconduct; and
- (h) discussion by a county legislative body of commercial information as defined in Section **59-1-404**.
- (2) A public body may not interview a person applying to fill an elected position in a closed meeting.

52-4-206. Record of closed meetings.

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection **52-4-205**(1), the public body:

- (a) shall make a recording of the closed portion of the meeting; and
- (b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.

(3) The recording and any minutes of a closed meeting shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent; and
- (c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(5) Both a recording and written minutes of closed meetings are protected records under Title 63, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section **52-4-304**.

(6) If a public body closes a meeting exclusively for the purposes described under Subsection **52-4-205**(1)(a) or Subsection **52-4-205**(1)(f):

- (a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection **52-4-205**(1)(a) or Subsection **52-4-205**(1)(f); and
- (b) the provisions of Subsection (1) of this section do not apply.

52-4-207. Electronic meetings -- Authorization -- Requirements.

(1) A public body may convene and conduct an electronic meeting in accordance with this section.

(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) The resolution, rule, or ordinance may:

- (i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
- (ii) require a quorum of the public body to:

(A) be present at a single anchor location for the meeting; and

(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;

(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;

(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or

(v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that convenes or conducts an electronic meeting shall:

(a) give public notice of the meeting:

- (i) in accordance with Section **52-4-202**; and
- (ii) post written notice at the anchor location;

- (b) in addition to giving public notice required by Subsection (3)(a), provide:
 - (i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
 - (ii) a description of how the members will be connected to the electronic meeting;
 - (c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;
 - (d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and
 - (e) if the meeting includes a public hearing, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.
- (4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections **52-4-201** and **52-4-202**.

52-4-208. Chance or social meetings.

- (1) This chapter does not apply to any chance meeting or a social meeting.
- (2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

52-4-301. Disruption of meetings.

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

52-4-302. Suit to void final action -- Limitation -- Exceptions.

- (1) Any final action taken in violation of Section **52-4-201**, **52-4-202**, or **52-4-207** is voidable by a court of competent jurisdiction.
- (2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.
- (3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

52-4-303. Enforcement of chapter -- Suit to compel compliance.

- (1) The attorney general and county attorneys of the state shall enforce this chapter.
- (2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.
- (3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:
 - (a) compel compliance with or enjoin violations of this chapter; or
 - (b) determine the chapter's applicability to discussions or decisions of a public body.
- (4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

52-4-304. Action challenging closed meeting.

- (1) Notwithstanding the procedure established under Subsection **63-2-202(7)**, in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:
 - (a) review the recording or written minutes of the closed meeting in camera; and
 - (b) decide the legality of the closed meeting.
- (2) (a) If the judge determines that the public body did not violate Section **52-4-204**, **52-4-205**, or **52-4-206** regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.
- (b) If the judge determines that the public body violated Section **52-4-204**, **52-4-205**, or **52-4-206** regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

52-4-305. Criminal penalty for closed meeting violation.

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

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10-3-1304. Use of office for personal benefit prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for an elected or appointed officer or municipal employee, under circumstances not amounting to a violation of Section **63-56-1001** or **76-8-105**, to:

(a) disclose or improperly use private, controlled, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(b) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges for himself or others; or

(c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift that:

(i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(3) Subsection (2)(c) does not apply to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

10-3-1305. Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.

(1) As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.

(2) It is an offense for an elected officer, or appointed officer, who is a member of a public body, under circumstances not amounting to a violation of Section **63-56-1001** or **76-8-105**, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality in which he is an officer unless he:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) in an open meeting to the members of the body of which he is a member immediately before the discussion.

(3) It is an offense for an appointed officer who is not a member of a public body or a municipal employee to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality by which he is employed unless the officer or employee:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) to:

(i) his immediate supervisor; and

(ii) any other municipal officer or employee who may rely upon the employee's representations in evaluating or approving the transaction.

(4) (a) The officer or employee shall file the statement required to be filed by this section ten days before the date

of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or ten days before the receipt of compensation by the officer or employee, whichever is earlier.

(b) The statement is public information and shall be available for examination by the public.

(5) The statement and disclosure shall contain:

(a) the name and address of the officer or municipal employee;

(b) the name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest; and

(c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

10-3-1306. Interest in business entity regulated by municipality -- Disclosure statement required.

(1) Every appointed or elected officer or municipal employee who is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to the regulation of the municipality in which he is an elected or appointed officer or municipal employee shall disclose the position held and the nature and value of his interest upon first becoming appointed, elected, or employed by the municipality, and again at any time thereafter if the elected or appointed officer's or municipal employee's position in the business entity has changed significantly or if the value of his interest in the entity has increased significantly since the last disclosure.

(2) The disclosure shall be made in a sworn statement filed with the mayor. The mayor shall report the substance of all such disclosure statements to the members of the governing body, or may provide to the members of the governing body copies of the disclosure statement within 30 days after the statement is received by him.

(3) This section does not apply to instances where the value of the interest does not exceed \$2,000. Life insurance policies and annuities shall not be considered in determining the value of any such interest.

10-3-1307. Interest in business entity doing business with municipality -- Disclosure.

(1) Every appointed or elected officer or municipal employee who is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the municipality in which he is an appointed or elected officer or municipal employee, shall publicly disclose to the members of the body of which he is a member or by which he is employed immediately prior to any discussion by such body concerning matters relating to such business entity, the nature of his interest in that business entity.

(2) The disclosure statement shall be entered in the minutes of the meeting.

(3) Disclosure by a municipal employee under this section is satisfied if the employee makes the disclosure in the manner required by Sections **10-3-1305** and **10-3-1306**.